

RULE AND REGULATION 24

SURPLUS LINE INSURANCE

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Section 1. Purpose

The purpose of this Rule and Regulation is to clarify existing legislation regarding this subject matter so that originating agents and brokers, resident surplus line brokers in Arkansas licensed under Ark. Code Ann. §§ 23-65-301, et seq., and non-resident surplus line brokers for purchasing groups pursuant to Ark. Code Ann. § 23-94-104 (b) (2) (Supp. 1989) are provided with clear guidelines in conducting surplus line business. It is the purpose of this Rule and Regulation to adopt forms and documents necessary for proper reporting and accounting on property, casualty, surety and marine insurance issued by surplus line insurers through surplus line brokers.

Section 2. Authority

This Rule and Regulation is promulgated pursuant to the authority granted to the Insurance Commissioner under Ark. Code Ann. §§ 23-61-108; 23-65-301, et seq.; 23-94-104(b); 25-15-201, et seq.; and other applicable provisions of Arkansas law.

Section 3. Applicability and Scope

The provisions of this Rule shall be applicable to resident and non-resident agents and brokers licensed for property, casualty, surety and marine insurance transactions in this State, and serving as the originating agent/broker on Arkansas surplus line policies; Arkansas resident surplus line brokers licensed pursuant to Ark. Code Ann. §§ 23-65-301, et seq.; and non-resident surplus line brokers for purchasing groups only, licensed pursuant to Ark. Code Ann. §23-94-104(b).

Section 4. Effective Date

The effective date of this Rule shall be September 2, 1991.

Section 5. Affidavits

A. Attached to this Regulation is Form SL-1 which provides for the Affidavit of the Originating Agent or Broker, and Form SL-2 which provides for the Affidavit of the Surplus Line Broker. In accordance with Ark. Code. Ann. § 23-65-306, the surplus line broker's affidavit must be completed in full and forwarded to the Commissioner by the surplus line broker within sixty (60) days of the end of the month in which the coverage was procured. The executed originating agent's affidavit must be maintained in the office of the originating agent or broker.

B. The originating agent or broker, pursuant to Ark. Code. Ann. § 23-65-305, must make a diligent effort to place the business in admitted insurers. To this end the originating agent or broker must attempt to place the business with those admitted insurers which he has reason to believe are actually marketing in this State the kind or class of insurance sought to be placed, before the business may be placed in surplus line insurers.

C. In regard to the affidavit of the surplus line broker, he may rely on the diligent effort reported to have been made by the originating agent or broker in the affidavit Form SL-1. If the surplus line broker also serves as the originating agent or broker, the surplus line broker must make the diligent effort to secure coverage through the admitted market.

D. If the originating agent or broker is made aware of an offer of renewal in the admitted market, from any source, the property, casualty, surety or marine policy cannot be written on a surplus line basis unless qualifying therefor under subsection 5(E) below.

E. The originating agent or broker and the surplus line broker may consider to be a "declination" any offer of similar coverage by an admitted insurer wherein such insurer would require a gross premium of twenty percent (20%) or more higher than the total gross premium and charges for insurance (including taxes and expense of underwriting) applicable to the procurable surplus line coverage.

F. In accordance with Ark. Code. Ann. § 23-65-305, if a portion of the property or risk can be written in an admitted insurer, this must be done, and the amount of insurance placed in an approved surplus line insurer can only be the balance over the amount procurable from admitted insurers.

G. The originating agent or broker shall complete each month a separate affidavit Form SL-1 for each surplus line broker through whom business was placed in the surplus line market for that month. The originating agent or broker must list thereon all risks placed through each broker for each month. These affidavits should be maintained in the office records of the originating agent or broker.

H. It is permissible for the surplus line broker to file one completed monthly affidavit, Form SL-2, with the insurers' names, total premiums, total expense of underwriting, and total tax for each insurer with which he placed business during that month, and a completed Form SL-2A for each insurer.

I. Each affidavit must contain original signatures and rubber stamped or facsimile signatures are unacceptable.

J. Return premiums, additional premiums, and premiums paid on the monthly payment method are to be so identified on Form SL-2A [in the column marked (7) Proper Designation]. In the column designated as "Premium", the amount of the premium and the amount of return premium (in parenthesis) are to be inserted.

K. If the surplus line broker desires to retain evidence of having filed Forms SL-2 with the Department, the surplus line broker must forward one (1) additional copy thereof so that the Department can stamp the copy "FILED" and return it to the surplus line broker. The broker must also attach a postage paid, self-addressed envelope for use in returning the copy.

L. Due to the similarity of the names of many insurers, the full and complete names as they appear on the Arkansas Approved Surplus Lines Insurers List and the NAIC Non-Admitted Insurers Quarterly Listing must be given on all forms.

M. The guidelines and procedures outlined in this Regulation and as provided for by law shall apply anew each time a particular coverage which has been placed in the surplus line market is proposed to be rewritten or renewed on a surplus line basis.

N. Computer-generated Forms SL 1, 2, 3 and 4 are permissible for use so long as they follow the format outlined in the Exhibits to this Rule; and specimen forms are submitted to the Commissioner for approval prior to use in this State.

Section 6. Endorsement of Contract

Particular attention should be given to compliance with Ark. Code Ann. §23-65-307, which requires that all insurance contracts procured and delivered as surplus line coverage shall be initialed by or bear the name of the surplus line broker who procured it and have stamped upon it the following: "This contract is registered and delivered as a surplus line coverage under the Surplus Lines Insurance Law."

Section 7. Required Procedure of Originating Agent or Broker

A. With the exception of coverages for members of registered purchasing groups under subsection (B) below, the originating agent or broker must procure surplus line business through a licensed Arkansas resident surplus line broker. If the licensed originating agent or broker is a non-resident broker, or alternately uses a non-resident broker for facilitating surplus line coverage for Arkansas risks, it is the responsibility of the originating agent or broker to assure that surplus line reports and tax payments are filed with the Commissioner by a licensed resident surplus line broker.

B. Pursuant to Ark. Code. Ann §23-65-306(b) and §23-94-104(b)(2), originating agents or brokers procuring surplus line insurance for Arkansas property or risks of members of purchasing groups registered in this State must procure surplus line business through either a licensed resident Arkansas surplus line broker or through a non-resident surplus line broker for purchasing groups only, as duly licensed in this State.

If the licensed originating agent or broker is/uses a non-resident broker for facilitating surplus line coverage for purchasing group members, it is the responsibility of the originating agent or broker to assure that surplus line reports and tax payments are filed with the Commissioner by a licensed resident Arkansas surplus line broker or a licensed non-resident surplus line broker for purchasing groups only.

Section 8. Disclosure to Surplus Line Insured

Attached to this Regulation is Form SL-3, Disclosure to Surplus Line Insured, which must be signed by the insured and retained by the originating agent or broker in his office records together with the Form SL-1.

Section 9. Licensing of Corporations and Partnerships Acting as Surplus Line Brokers

A. All individuals acting as surplus line brokers in this State must first individually qualify for and be issued a surplus line broker's license pursuant to Ark. Code Ann. § 23-65-308 or § 23-94-104(b)(2)(B).

B. Hereinafter, any corporation or partnership which provides a facility for transacting business on a surplus line basis shall be required to apply for and obtain a surplus line broker's license in the name of the corporation or partnership, pursuant to Ark. Code Ann. § 23-65-308 and § 23-94-104(b)(2)(B). Each individual to act as a surplus line broker under the license must qualify individually for a surplus line broker's license and upon doing so will be added to the license of the corporate or partnership broker. As to corporations and partnerships currently operating on this basis but not being corporately licensed, a period of sixty (60) days is granted beyond the effective date of this Regulation within which such licenses must be obtained in order for such corporations, partnerships and individuals to remain in compliance with this Regulation.

Section 10. Records of Surplus Line Brokers

In addition to the items of information required to be maintained by the surplus line broker, pursuant to Ark. Code Ann. § 23-65-313(a)(9), it shall also be required that surplus line brokers maintain complete records as to expenses incurred designated as "expenses of underwriting", as well as the amount of such expense collected from insureds. It shall be sufficient for these records to be maintained in total for each surplus line insurer, and it shall not be necessary to maintain records on an individual risk basis.

Section 11. Statement to be Filed Annually

A. Attached to this Regulation is Form SL-4 which must be completed in full by all licensed surplus line brokers and submitted to the Department on or before the first day of March of each year, pursuant to Ark. Code Ann. §23-65-314.

B. All surplus line brokers must file Form SL-4 even if he did not write any Arkansas business on a surplus line basis during the preceding calendar year, noting thereon that no business was transacted.

C. As to surplus line brokers who write business only through a corporation or partnership which is also licensed as a surplus line broker, only a Form SL-4 filed by the corporation or partnership shall be necessary.

Section 12. Surplus Line Tax

The filing of each Form SL-2 must be accompanied by full payment of the 4% tax required by Ark. Code Ann. § 23-65-215. The filing of Form SL-4, due March 1 annually, must be accompanied by full payment of the balance of taxes due, if any, for surplus line insurance procured during the preceding calendar year. Expense of underwriting shall be considered as part of the premium for surplus line tax purposes.

Section 13. Severability

If any section or portion of a section of this Regulation or the application thereof to any person or circumstances is held invalid by a court, the remainder of the Regulation, or the application of such provision to other persons or circumstances shall not be affected thereby.

(Signed by Commissioner Douglass
LEE DOUGLASS
INSURANCE COMMISSIONER

August 7, 1991

DATE

EXHIBIT "1"

AFFIDAVIT OF ORIGINATING AGENT OR BROKER

FORM SL-1

State of _____

City and County of _____, _____

_____ first being duly sworn, deposes and says that he is a duly licensed resident/non-resident agent or broker or duly licensed non-resident surplus lines broker for purchasing groups only for the line(s) of property, casualty, surety, and marine insurance to which this affidavit applies, and that the insurance coverages listed hereinafter were procured during the month of _____, 19____, through the assistance of _____, a licensed surplus line broker. Affiant further states that he has made a diligent effort to place these coverages in those admitted insurers licensed in Arkansas which are actually marketing in this State the kind or class of insurance sought to be placed, and that being unable to place such coverages, or a part thereof, in admitted insurers, the hereinafter listed coverages were placed through the surplus line market.

Finally, Affiant states that the information contained in the Disclosure to surplus Line Insured, a copy of which is attached hereto, was made known to the Insured prior to the procuring of the coverage in a nonadmitted insurer and that the insured's signature thereon was obtained as soon as reasonably possible.

Originating Agent or Broker

Agency Represented

Address

Telephone Number

Subscribed and sworn to or affirmed before me
This ____ day of _____, 19____.

Notary Public
My Commission expires _____
19____.

(Ed. 4/91)

[illegible]

EXHIBIT "2"

Page 1 of _____

AFFIDAVIT OF SURPLUS LINE BROKER
Form SL-2

STATE OF _____

COUNTY OF _____, CITY OF _____, _____

_____ first being duly sworn, deposes and says that AFFIANT is a duly LICENSED SURPLUS LINE BROKER for the State of Arkansas, and that the coverages were placed through the following listed companies and received by the broker during the month of _____, 19____. AFFIANT states that, to the best of AFFIANT's knowledge, the placing of these coverages has been done in full compliance with the state of Arkansas and acknowledges that the information contained herein is true and correct to the best of said AFFIANT's knowledge and belief.

SURPLUS LINE INSURERS ISSUING COVERAGE	AMOUNT OF PREMIUM	EXPENSE OF UNDERWRITING	TAX DUE (PREM. +Exp.x4%)

Agency_____
Surplus Line Broker_____
Address_____
Telephone Number

Subscribed and sworn to or affirmed before me on this _____ day of _____, 19____.

My commission expires: _____

Notary Public

INDIVIDUAL SHEETS (FORMS SL-2A) SHOWING THE COMPANIES AND PREMIUMS, FEES AND TAXES MUST BE ATTACHED TO THIS FORM.

(Ed. 4/91)

STATE OF ARKANSAS

MONTH AND YEAR OF REPORT _____

AGENCY NAME: _____

INSURER NAME: _____

(1) ORIGIN. AGENT/ BROKER	(2)* NAME OF INSURED	(3) POLICY #	(4) LOCATION OF RISK	(5) % RISK IN ARK.	(6) POLICY EFF DATE	(7)** PROPER DESIGNATION	(8) DATE RCVD BY BROKER	(9) PREMIUM AMOUNT	(10) EXPENSE OF UNDER.	(11) TAX DUE

*Column (2) If the named insured is a member of a purchasing group, please name Purchasing Group (Ex: John Smith/XYZ Purchasing Gr)

**Column (7) Proper Designation: Binder, Audit, Endorsement, Excess, Monthly Report, Additional Premium, Return Premium

DISCLOSURE TO SURPLUS LINE INSURED

FORM SL-3

THE UNDERSIGNED ACKNOWLEDGES THAT HE HAS BEEN INFORMED THAT THE INSURANCE RISK FOR WHICH HE DESIRES COVERAGE HAS BEEN PLACED PURSUANT TO THE SURPLUS LINE INSURANCE LAW; AND THAT HE UNDERSTANDS THAT THE INSURANCE COMPANY'S RATES AND FORMS ARE NOT SUBJECT TO REVIEW BY THE ARKANSAS INSURANCE DEPARTMENT; THAT THE PROTECTION OF THE ARKANSAS PROPERTY AND CASUALTY GUARANTY ACT DOES NOT APPLY TO A POLICY WRITTEN PURSUANT TO THE SURPLUS LINE INSURANCE LAW; AND THAT A TAX OF 4% IS REQUIRED BY LAW TO BE COLLECTED ON ALL SURPLUS LINE INSURANCE PREMIUMS.

DATE

SIGNATURE OF INSURED

FIRM REPRESENTED, IF APPLICABLE

Address

Telephone Number

Name of Purchasing Group
(if applicable)

(Ed. 4/91)

EXHIBIT "4"
ANNUAL STATEMENT OF SURPLUS LINE BROKER
FORM SL-4

FOR YEAR ENDING DECEMBER 31, _____

NAME OF RESIDENT SURPLUS LINE BROKER OR CORPORATION
OR NON-RESIDENT SURPLUS LINE BROKER FOR PURCHASING GROUPS

STATE OF _____

CITY AND COUNTY OF _____, _____

FIRST BEING DULY SWORN, DESPOSES AND SAYS THAT AS
A LICENSED RESIDENT SURPLUS LINE BROKER OR NON-RESIDENT SURPLUS LINE BROKER
FOR PURCHASING GROUPS FOR THE YEAR INDICATED, THE INFORMATION CONTAINED
HEREIN IS A COMPLETE, TRUE AND CORRECT REPORT AS TO ARKANSAS SURPLUS LINE
BUSINESS WRITTEN BY THE UNDERSIGNED, TO THE BEST OF MY KNOWLEDGE, INFORMATION
AND BELIEF.

SIGNATURE OF SURPLUS LINE BROKER OF NON-RESIDENT
SURPLUS LINE BROKER FOR PURCHASING GROUP

ADDRESS

TELEPHONE NUMBER

LIST PURCHASING GROUPS (IF APPLICABLE)

SUBSCRIBED AND SWORN TO OR AFFIRMED BEFORE ME
THIS _____ DAY OF _____, _____.

Notary Public
MY COMMISSION EXPIRES _____.

(Ed. 4/91)

Name of Non-Admitted Insurer	Premiums Written	Expense of Underwriting	Tax Due (at 4%)	Tax Paid
TOTALS				